Michigan Road Maintenance Company, LLC d/b/a Michigan Roads Maintenance Company, LLC *and* Local 247, International Brotherhood of Teamsters, AFL–CIO, Jeffrey A. Crawford, Local 614, United Construction Trades and Industrial Employees International Union. Cases 7–CA–46426 and 7–CA–46891

May 11, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On October 27, 2004, Administrative Law Judge Joseph Gontram issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions, a supporting brief, and an answering brief to the Respondent's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions[4] as modified below and to adopt the recommended Order as modified.[5]

The judge found, among other things, that the Respondent's operations manager, Adam Edwards, did not violate Section 8(a)(1) of the Act when he approached employee James Murray and asked Murray if he had heard about the Teamsters' efforts to organize the Respondent's employees. Although finding that Edwards immediately followed this question with an unlawful statement, i.e., that the Respondent would shut its doors and sell the equipment if the employees tried to bring the Teamsters in, the judge found that Edwards' initial question did not constitute an unlawful interrogation. Rather, he found the question served no purpose other than to set up the subsequent unlawful threat. We disagree.

Asking an employee about his knowledge of a union's organizing activities may, depending on the circum-

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] We find no merit to the Respondent's contention that the judge erroneously denied its motion to admit into evidence the affidavit of General Manager Adam Edwards. Any statement in the affidavit favorable to the Respondent would be nonprobative hearsay. See, e.g., *Consolidated Accounting Systems*, 225 NLRB 93, 95 (1976).

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] Chairman Battista and Member Schaumber agree with the judge's conclusion that the General Counsel failed to establish that operations manager Adam Edwards created the impression of surveillance in his remarks to employee Jeffrey Crawford. The facts show that on September 15, 2003, Edwards told Crawford—who had just finished placing union flyers on cars parked in the Respondent's parking lot—not to "start that union stuff on this property." Crawford responded by asking Edwards how he "knew what was going on down there," to which Edwards replied that "he knew." Our dissenting colleague says that Edwards' initial statement ("Don't start that union stuff on this property") gave the impression that union activity was under surveillance. However, the union activity was in the open, and thus there was no reason for Crawford to believe that Edwards acquired his knowledge by spying on the activity. Crawford's response to Edwards ("How do you know what is going on down there?") does not give the antecedent Edwards' statement a surveillance quality that it does not otherwise have. Moreover, it is unclear what "down there" refers to. Without evidence of where "down there" is, all we have is a response evidencing Crawford's *subjective* belief that Edwards would not know what is going on "down there" unless he had been surveilling employee's union activities. That is insufficient for us to determine whether, under the circumstances, Crawford *reasonably* could have concluded from Edwards' statement that either his union activity or that of his fellow employees was being monitored. Edwards' rejoinder that "he knew" does not fill this evidentiary gap.

Accordingly, the General Counsel has failed to sustain his burden of proof of establishing that Edwards' remarks created the impression of surveillance. We thus find the instant facts distinguishable from those at issue in *Sam's Club*, 342 NLRB No. 57, slip op. at 1–2 (2004), where an employer's store manager created the impression of surveillance by telling an employee that he had heard the employee had circulated a petition. The Board in *Sam's Club* stated the applicable test as whether, "*under the circumstances*, the employee reasonably could conclude from the statement in question that his protected activities are being monitored." Id. slip op. at 1 (emphasis added). Finding the violation under that test, the Board observed that the employee had not circulated the petition openly. Id. slip op. at 2. Here, by contrast, Crawford openly placed flyers on vehicles parked on the Respondent's own property. Under these circumstances, Crawford would not reasonably conclude that his union activity was being monitored. Nor did the Edwards comment suggest that union activity in general was under surveillance. Just as the conversation is too ambiguous to suggest that the placing of flyers on vehicles was under surveillance, so also the conversation is even more ambiguous as to the more nebulous "union activity."

Member Liebman would reverse the judge's conclusion that the Respondent did not violate Sec. 8(a)(1) by creating the impression of surveillance in the course of a conversation between operations manager Adam Edwards and employee Jeffrey Crawford. In her view, contrary to the judge's determination, Crawford could reasonably have assumed from Edwards' statement ("Don't start that union stuff on this property") that his activities were under surveillance. Crawford's response to Edwards ("How do you know what is going on down there?") demonstrates that he suspected surveillance, and Edwards' rejoinder, that he simply knew, did not negate—indeed, it tended to reinforce—the possibility of surveillance. See, e.g., *Sam's Club*, 342 NLRB No. 57, slip op. at 1–2 (2004).

[5] We shall modify the judge's recommended order to include the additional violation found, and shall substitute a new notice in accordance with our decision in *Ishikawa Gasket America*, 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

stances, violate Section 8(a)(1) of the Act. See, e.g., *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB No. 124, slip op. at 2 (2004). Here, there was an obvious connection between Edwards' inquiry and his unlawful threat. The threat did not neutralize the coercive tendency of the question; rather, it reinforced that tendency. Accordingly, we reverse the judge's dismissal of this allegation, and find that the Respondent violated Section 8(a)(1) by interrogating employee Murray.[6]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Michigan Road Maintenance Company, LLC, Trenton, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(e) and reletter the subsequent paragraphs accordingly.

"(e) Interrogating its employees regarding the organizational efforts of the Teamsters union."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. May 11, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you regarding the futility of union activity.

WE WILL NOT threaten to discharge you or close our business if you engage in union activity.

WE WILL NOT maintain a rule prohibiting you from soliciting for unions or distributing union literature on our property.

WE WILL NOT interrogate you about the organizational efforts of the Teamsters union.

WE WILL NOT distribute or solicit signatures on authorization cards for Local 614, United Construction Trades and Industrial Employees International Union (Local 614).

WE WILL NOT discharge or otherwise discriminate against any employee for supporting Local 247, International Brotherhood of Teamsters, AFL–CIO or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold recognition from Local 614 as the representative of unit employees unless the

[6] Members Liebman and Schaumber join in finding this interrogation violation. In view of this finding of a violation, they find it unnecessary to pass on the judge's finding that the Respondent did not violate the Act when Edwards asked employee Jeffrey Crawford why the employees were having a meeting because any finding of a violation would be cumulative and would not affect the remedy.

Contrary to his colleagues, Chairman Battista finds that the question that Edwards posed to employee Murray was not unlawful. The purpose of the question was not to extract from Murray his sentiments regarding unionization. Rather, the question was a lead-in to Edwards' threat. That is, rather than simply blurt out a threat, Edwards chose to provide a context by introducing the subject of the union campaign. The Chairman agrees that the threat was unlawful. However, a finding of a coercive threat *and* a coercive interrogation would make two violations out of one. The Chairman would simply condemn the threat. The Chairman finds this case distinguishable from *Donaldson Bros. Ready Mix*, supra, where the question at issue was not a lead-in to another statement, but was one that specifically sought information from an employee about whether a union organizing campaign was underway.

Although the Chairman therefore disagrees with his colleagues' finding that Edwards unlawfully interrogated Murray, he notes that their finding results in a cease and desist order as to interrogations. Accordingly, he joins his colleagues in finding it unnecessary to pass on the allegation concerning Edwards' questioning of Crawford.

Board certifies Local 614 as the exclusive collective-bargaining representative of members of the unit

WE WILL within 14 days from the date of this Order, offer Jeffrey A. Crawford full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Jeffrey A. Crawford whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Jeffrey A. Crawford, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

MICHIGAN ROAD MAINTENANCE COMPANY, LLC
D/B/A MICHIGAN ROADS MAINTENANCE COMPANY, LLC

Mary Beth Foy, Esq. and *Scott Preston, Esq.*, for the General Counsel.

William M. Donovan, Esq. (Donovan & Mordell, PLC), of Rochester, Michigan, for the Respondent.

Paul Jacobs, Esq., for the Charging Union.

DECISION

STATEMENT OF THE CASE

JOSEPH GONTRAM, Administrative Law Judge. This case was tried in Detroit, Michigan, on June 16, 2004. The original charge in Case 7–CA–46426 was filed on July 17, 2003,[1] and was amended on September 17. The charge in Case 7–CA–46891 was filed on November 25. The original complaint was issued September 30. The cases were consolidated, an amended complaint was issued on January 28, 2004, and the complaint was amended again at the start of the hearing. The amended complaint alleges that Michigan Road Maintenance Company, LLC d/b/a Michigan Roads Maintenance Company, LLC (the Respondent): (1) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by (a) telling an employee it would be futile to support either Local 247, International Brotherhood of Teamsters, AFL–CIO or Local 614, United Construction Trades and Industrial Employees International Union (Local 614 or the Party in Interest), (b) prohibiting an employee from distributing union-related literature during nonwork time, (c) creating the impression that employees' union activities were under surveillance, (d) threatening layoff or discharge and the closure of the Respondent's business if the employees pursued their organizing activities, and (e) interrogating employees about their protected activities;[2] (2) violated Section 8(a)(2) by distributing Local 614 union authorization cards to employees, inducing employees to sign the cards, and granting recognition to Local 614 as the exclusive bargaining representative of the Respondent's truckdrivers and shop employees; and (3) violated Section 8(a)(3) by discharging truckdriver Jeffrey A. Crawford.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the business of transporting gravel, dirt, stone, and sand through its facility in Trenton, Michigan,[3] where it annually performs services worth more than $50,000 for companies that are directly engaged in interstate commerce or under the jurisdiction of the National Labor Relations Board (the Board). The Respondent agrees and stipulates to the foregoing jurisdictional facts (Tr. 14, 17, 18).[4] In addition, on May 25, counsel for the parties discussed the Board's jurisdiction in this case. After their conversation, counsel for the General Counsel wrote the following letter to the Respondent's counsel:

> This will confirm our May 25th telephone conversation in which you acknowledge that, since its opening in April 2003, Respondent, in conducting its business operations, has purchased goods and materials valued in excess of $50,000.00 directly from points located outside the State of Michigan and transported said goods and materials to road maintenance job sites within the State of Michigan. You further acknowledge that Respondent does more than $50,000.00 worth of business with companies who are either directly engaged in interstate commerce or are otherwise under the Board's jurisdiction. If the above is not a correct statement, please advise me as soon as possible.

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[1] All dates are in 2003 unless otherwise indicated.

[2] At the beginning of the hearing and before the presentation of testimonial evidence, the General Counsel made a motion to amend the complaint to add allegations, inter alia, that in August 2003, the Respondent, through Adam Edwards, violated Sec. 8(a)(1) by interrogating employees and threatening the closure of the Respondent's business. These allegations were similar to the existing allegations in the complaint, with the addition of another date on which similar alleged violations occurred. The complaint alleged that these 8(a)(1) violations occurred in September. The proposed amendments, adding subparagraphs 8(g) and (h), alleged that similar violations also occurred in August. The amendments were permitted over the objection of the Respondent. Amendments that are closely related to existing charges or arise from the same general sequence of events are permitted. *Nabors Alaska Drilling, Inc*., 325 NLRB 574, 583 (1998). Here, the amended allegations are closely connected to the existing charges, the allegations arise from the same sequence of events that are in the existing charges, and the allegations involve violations of the same section of the Act. See *Pioneer Hotel & Gambling Hall*, 324 NLRB 918 fn. 1 (1997), enfd. in pertinent part 182 F.3d 939 (DC Cir. 1999). Moreover, the Respondent did not object to another amendment offered by the General Counsel, adding subparagraph 8(f), which was essentially indistinguishable from the proposed amendments to subparagraphs 8(g) and (h). The amendments were properly allowed and I adhere to the ruling permitting the amendments.

[3] All locations are in the State of Michigan unless otherwise indicated.

[4] References to the transcript of the hearing are designated as Tr.

(Tr. 14). The Respondent's counsel did not reply to this letter. The Respondent contends that the goods and materials transported by the Respondent in its trucks are transported between locations within the State of Michigan. However, these facts do not negate the jurisdiction of the Board to adjudicate this case. The jurisdictional standard of the Board may be satisfied indirectly as well as directly. *Siemons Mailing Service*, 122 NLRB 81 (1958). Thus, an employer who provides $50,000 worth of services to a company that is engaged in interstate commerce and within the Board's jurisdiction is an employer over whom the Board will assert jurisdiction. Id. at 85–86. The Respondent agrees and stipulates that it performs $50,000 worth of services for such companies. Accordingly, I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent has recognized Local 614 as the representative of its truckdrivers and shop employees. Accordingly, I conclude that Local 614 is a labor organization within the meaning of Section 2(5) of the Act. Teamsters Local 247 was represented by counsel at the hearing, although no evidence was presented on its status as a labor organization. Nevertheless, in prior cases the Board has found that Teamsters Local 247 is a labor organization. E.g., *Yuker Construction Co*., 335 NLRB 1072 (2001); *Teamsters Local 247 (Rymco)*, 332 NLRB 1230 (2000). Accordingly, I take judicial notice that Teamsters Local 247 (the Teamsters) is a labor organization within the meaning of Section 2(5) of the Act. See *Cooper's Inc*., 107 NLRB 979, 981 fn. 1 (1954).

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent was formed in approximately April 2003 and began operations in May. Michael Favor is the general manager, and Adam Edwards, who was hired in March, is the operations manager. The Respondent admits and I find that Favor and Edwards are supervisors within the meaning of Section 2(11) of the Act and are agents of the Respondent within the meaning of Section 2(13) of the Act. As of June 10, the Respondent employed approximately seven truckdrivers and approximately two mechanics. Jeffrey Crawford, John Feist, Timothy Sawyer, Jerrold Gardner, and Thomas Fesko were among the first drivers hired by the Respondent, and they were hired in late May.

On May 30, shortly after Feist was hired, Edwards approached him and handed him an authorization card for Local 614. Edwards told Feist that if he wanted to receive medical benefits, he had to sign the card. Accordingly, Feist signed the card and handed it back to Edwards. That same day, Edwards asked Crawford to step into his office. Edwards told Crawford that he had to sign the Local 614 authorization card in order to get medical benefits. Crawford asked about the Teamsters, but Edwards replied that Local 614 was the union that "we got together and you needed to sign [the authorization card] to get your health benefits" (Tr. 45). Accordingly, Crawford signed the card and returned it to Edwards. Also in May, shortly after Gardner was hired but before he started working, Edwards directed Gardner to complete certain papers. Among the papers was an authorization card for Local 614. Gardner expected a union like the Teamsters to represent the truckdrivers, and so he asked Edwards about Local 614. Edwards replied that Local 614 was the union in place at the Respondent, and Gardner would not get health benefits unless he filled out the card.

On June 10, the Respondent, in a letter to Frank Miles, United Construction Trades and Industrial Employees Union, recognized Local 614 as the representative of its truckdrivers and shop employees. This recognition was based on the authorization cards that employees had signed, including the cards signed by Feist, Crawford, and Gardner. On June 10, there were seven employees in the bargaining unit.

The Respondent's efforts on behalf of Local 614 continued beyond June 10. For example, Brian Maddox was hired in late June or early July and worked until early October. In approximately July, Edwards told Maddox that Local 614 was the union that would represent the Respondent's employees. Later, Edwards told Maddox that no other union would get into the Respondent except Local 614. In late July or early August, a meeting of the drivers was held in the Respondent's maintenance garage. Edwards presided and addressed the drivers. Three representatives from Local 614 were also present. Edwards told the drivers that Local 614 was the recognized union for the Respondent, and if the drivers wanted medical benefits, they had to sign union cards. At least one additional driver, James Murray, signed a card for Local 614 after these statements.

Edwards testified that he had no concern whether Local 614 or the Teamsters represented the drivers because it had nothing to do with his job. Edwards was not a credible witness, and this testimony is an example. The claim is belied by Edwards' distribution of authorization cards for Local 614 and his instruction to the drivers that if they wanted to receive medical benefits they would have to sign the cards. The Respondent's obvious preference for Local 614 is demonstrated by Edwards' solicitation of signed authorization cards for Local 614, the Respondent's June 10 letter of recognition to Local 614, and its failure to prove, or attempt to prove, that Local 614 at any time had obtained a lawful majority support from the Respondent's drivers.

Moreover, with respect to Edwards' statement that no other union would get into the Respondent except Local 614, Edwards did not specifically deny making this statement. Edwards generally denied telling Crawford of the futility of organizing. However, his failure to deny making the statement leaves Crawford's testimony unrebutted and provides additional support to the conclusion that the statement was made. *Williamson Memorial Hospital*, 284 NLRB 37, 39 (1987). Moreover, blanket denials by witnesses are generally insufficient to refute specific testimony by a proponent's witnesses. *Mercedes Benz of Orland Park*, 333 NLRB 1017, 1035 (2001). For these reasons, and in light of the witnesses' demeanor, I conclude that Edwards told Crawford that no other union would get into the Respondent except Local 614.

Shortly after the Respondent recognized Local 614, Crawford observed Michael Banes, an official of Local 614, in the company of Edwards at the Respondent's offices. Banes approached Crawford and said that he (Crawford) was the most senior driver and that Banes had selected him for the position of acting union steward. Crawford protested, but after Edwards

told him to accept the position, Crawford told Banes he would accept it. Later in June, Edwards called a meeting of the drivers, at which Crawford and Gardner were elected as union stewards. Notwithstanding Crawford's appointment and election to the position of steward for Local 614, he signed an authorization card for the Teamsters on July 8. After Crawford signed the Teamsters' card, the other drivers frequently asked him for information on the status of the two unions, especially after the Teamsters filed its initial charge in the present case on July 17.

In mid-August, at a jobsite in Monroe County, Edwards asked Murray if he had heard about the Teamsters' efforts to organize the workers. Murray replied he knew nothing about it. Edwards told Murray that Local 614 is the union that will be at the Respondent, and if the employees try to bring the Teamsters in, the Respondent will shut its doors and sell the equipment.

From June to September 4, Crawford and about three or four other drivers sporadically worked on a job at Pfizer Pharmaceutical hauling materials between Grand Rapids (or Holland) and Belleville. Although the job was arduous, it was not as difficult as most other driving jobs at the Respondent. Edwards testified that, after the Pfizer job ended, Crawford complained every couple of days about his work, and he requested preferential treatment. When asked whether other drivers complained, Edwards stated, "Not directly to me, no" (Tr. 130). Crawford denied complaining to Edwards, except for the Rockwood job described below. The truth is likely somewhere in the middle of Edwards' and Crawford's accounts. That is, Crawford did complain about his work—indeed, it is the rare employee who does not—but he did not complain with the frequency alleged by Edwards. Moreover, Edwards made no documentation of the complaints, nor did he counsel or mention the complaints to Crawford, demonstrating that the complaints did not impact Crawford's job performance and did not particularly trouble Edwards.

On Friday, September 12 at about 2 p.m., Edwards sent about four or five drivers, including Crawford, from Pontiac to Rockwood, which was 90 miles away, to pick up and deliver stone. Edwards delivered this instruction over a 2-way radio to which all drivers had access. Crawford complained over the 2-way radio that this job would require hours of work and could not be completed until about 10 p.m. that evening. Crawford told Edwards that the directive was "a bunch of crap" (Tr. 53). After this exchange, Edwards called Crawford on his cell phone. Edwards told Crawford that "if you guys have a problem, call him [Edwards] personally" (Tr. 84). Crawford said that he did have a problem with the order because it meant that the drivers would not get back to the yard until 10 p.m. Edwards replied that the job had to be completed, and if Crawford did not like it, he should quit. Notwithstanding this statement, Edwards acknowledges that this was the first time he had ever had any problem with Crawford. Crawford said that he would complete the job. Crawford then told Edwards that the drivers were going to have a meeting about the Respondent's working conditions. Edwards replied that the workers should not count on either of the unions attending the meeting. After Crawford's conversation with Edwards, Crawford spoke with other drivers on the CB radio, including Brian Maddox and Timothy Sawyer. They complained about the Pontiac to Rockwood job and about the low hourly rate they would be paid for the job.

Over the ensuing weekend, Crawford composed a flier to be distributed to all the drivers notifying them about a meeting for drivers to be held on September 16. Crawford distributed the fliers to the drivers before work hours on September 15, by placing one on each of their automobiles in the Respondent's parking lot. Edwards learned of Crawford's distribution of the fliers, and told Crawford, "don't start that union stuff on this property" and "do it somewhere else" (Tr. 59). Crawford asked Edwards how he knew "what was going on down there," and Edwards replied that he knew. Crawford replied, "No problem, I won't pass them out." Id.

Edwards testified that he told Crawford not to distribute union fliers during work hours (Tr. 124).[5] He claims he told this to Crawford because another employee had complained to Edwards after finding a flier on his car. However, Edwards did not identify this employee, and he does not assert that this unknown employee told him the time that Crawford had placed the flier on his car. In fact, Edwards did not know when Crawford had distributed the fliers. Therefore, it is not credible that Edwards would have prohibited Crawford from distributing fliers during work hours because he did not know, and did not ask Crawford, when he had distributed the fliers. Crawford was a credible witness, he distributed the fliers during nonwork time, and Edwards prohibited him from engaging in this union activity.[6]

On September 16, at approximately 6 p.m., Edwards approached Crawford and asked why the drivers were having the meeting that evening. Crawford told him that the meeting involved the union issue. Edwards replied that he did not care about the drivers having a meeting, but if the drivers pursued their union organization drive he would just fire them or "they might just close the whole company down" (Tr. 60–61).[7] The

[5] Edwards did not use the term "union fliers." Indeed, he did not use any term to describe what he prohibited Crawford from distributing. The Respondent's counsel used the term "literature" in his questions to Edwards, but it is unlikely that Edwards used that term when he spoke to Crawford. Edwards and Crawford were discussing a flier for a union meeting. Accordingly, even if Edwards' testimony on this point were accepted, it is probable that Edwards used the term "union fliers" or a similar phrase. In any event, I have credited Crawford and have found that Edwards told Crawford, "don't start that union stuff on this property." The present discussion addresses additional reasons why Edwards' testimony on this matter is rejected.

[6] Despite my crediting Crawford rather than Edwards on this matter, this credibility resolution does not affect the legal consequences of Edwards' statement because whether Edwards or Crawford is believed, Edwards' direction to Crawford violated Sec. 8(a)(1) of the Act. See infra.

[7] Although Edwards denied making this statement (Tr. 125), all facts found here are based on the record as a whole and on my observation of the witnesses. The credibility resolutions have been made from a review of the entire testimonial record and exhibits with due regard for logic and probability, the demeanor of the witnesses, and the teaching of *NLRB v. Walton Mfg. Co*., 369 U.S. 404 (1962). As to the witnesses testifying in contradiction of the findings, their testimony has been discredited, either because of their demeanor or because their testimony was in conflict with the testimony of reliable witnesses or because it

drivers' meeting was held that evening at 7:30 p.m. The meeting was held at a bar and was attended by Crawford, Sawyer, and other drivers, as well as a representative of the Teamsters. The Teamsters' representative discussed the unfair labor practice charges that had been and were being filed by the Teamsters. The Teamsters filed an amended charge the next day on September 17.

On September 23, at the end of the workday, Edwards met with Crawford in Edwards' office. Edwards told Crawford that he had received a call from the Huron Township police, who reported that Crawford had been disparaging[8] the Respondent to the police, and had been telling the police that the drivers worked too many hours and that the equipment was junk. Crawford denied that he had been disparaging the company. Crawford asked Edwards what he was going to do, and Edwards replied that the report was "hearsay," and there was nothing he could do about it. Edwards then said, "I'll see you in the morning" (Tr. 65).

Although Edwards told Crawford that he had received reports from the Huron Township police, this statement was false. First, it is unlikely that the police would report to a company, whose trucks they regulate, a matter so far removed from a proper police interest. Second, the General Counsel called as a witness one of the two Huron Township police officers who oversees motor carrier enforcement. This police officer denied making any such contact with the Respondent, and he knew of no such contact by any other member of the department. Moreover, Edwards realized the unreliability of such a report, even if it had been made, because he labeled it as hearsay and said there was nothing he could do about it.

Immediately after the meeting between Crawford and Edwards, Edwards met with driver Ted Redli. Redli told Edwards that he would like to have a conversation with Crawford. Edwards dissuaded him from doing this. Redli then allegedly told Edwards that Crawford had been disparaging the Respondent all day. The next morning, September 24, when Crawford reported for work, Edwards discharged him after telling Crawford that he had received another report concerning Crawford's complaints. Edwards did not give Crawford an opportunity to respond to this allegation.

Edwards states that about 1 or 2 weeks before September 23, Redli and driver Tom Fesko complained to him that Crawford had been making complaints on the job. Redli's alleged report was secondhand from a foreman or supervisor on a job. Edwards did not describe the substance of the alleged complaints from Redli and Fesko, and his testimony was not offered or received for the truth of the alleged complaints. The purpose of the testimony was to show Edwards' alleged motivation in discharging Crawford, viz., that Edwards discharged Crawford for his complaints about, or disparagement of, the Respondent, not for his union activity.

Nevertheless, there is a substantial question whether Redli and Fesko ever made complaints to Edwards about Crawford. Without regard to the truth of the alleged complaints by Redli and Fesko, the Respondent only presented the testimony of Edwards, who could hardly be effectively cross-examined regarding alleged complaints he received from third persons. The Respondent failed to call Redli or Fesko as witnesses. These drivers were allegedly upset with Crawford. For example, Edwards testified Fesko told him that Fesko did not want to be on any job with Crawford because of Crawford's alleged complaints. In addition, the likelihood of Redli knowing about disparaging remarks by Crawford on the job is decreased by the fact that Redli did not work on any jobs with Crawford. The Respondent's failure to call Redli or Fesko, its employees who had allegedly made complaints about, and were upset with, Crawford, casts doubt on Edwards' testimony that Redli and Fesko made complaints about Crawford and that Edwards relied on such complaints in his decision to discharge Crawford. Moreover, Crawford, who was a credible witness, testified that neither Redli nor Fesko ever told him that they were upset with him for making complaints about the Respondent. On balance, I conclude that the credible evidence is insufficient to establish that Redli and Fesko made complaints to Edwards about Crawford's job activities or performance. In addition, and without regard to whether Redli and Fesko made complaints, Edwards did not rely on such complaints when he discharged Crawford.

Crawford was not told that Redli and Fesko had complained about Crawford to Edwards. Indeed, Edwards claims that he discouraged Redli from speaking to Crawford about Redli's complaint, which was made the night before Crawford was discharged. Edwards' failure to mention such complaints to Crawford, especially the alleged complaint by Redli on which Edwards supposedly based his decision to terminate Crawford's employment, is consistent with and supports the foregoing determination that Redli and Fesko did not complain to Edwards about Crawford. Moreover, Redli was not working on the same jobs as Crawford. In Edwards' decision to discharge Crawford, he did not rely on reports from employees about Crawford allegedly disparaging the Respondent.

III. ANALYSIS

A. Section 8(a)(1)

1. Threats regarding the futility of union activity

Employers who threaten employees with the futility of selecting a bargaining representative violate Section 8(a)(1) of the Act. *Wellstream Corp*., 313 NLRB 698 (1994). In July, Edwards told Maddox that no other union would get into the Respondent except Local 614. This statement would reasonably convey to the drivers that the Respondent would frustrate or prevent their attempt to seek representation from the Teamsters, thereby telling them the futility of engaging in such organizing activities. Id. Accordingly, the Respondent violated Section 8(a)(1).

The General Counsel contends that Edwards' statement to Crawford on September 12, that the workers should not count on either of the unions attending the meeting on September 16, also violated Section 8(a)(1) by threatening the futility of this organizing activity. I disagree. In considering all the circumstances, the meaning of Edwards' statement is ambiguous and would not reasonably be understood by Crawford as a threat

was incredible and unworthy of belief or as more fully explained in the text.

[8] The term generally used by the witnesses was "bad-mouthing."

regarding the futility of this organizing activity. Accordingly, I will recommend that this allegation be dismissed.

2. Threats of discharge and plant closure

The threat of job loss, through discharge or plant closure, because of union activity is one of the most flagrant examples of interference with Section 7 rights. *Sheraton Hotel Waterbury*, 312 NLRB 304, 305 (1993); see *NLRB v. Gissel Packing Co*., 395 U.S. 575, 611 fn. 31 (1969). In mid-August, Edwards told Murray that the Respondent would shut its doors and sell the equipment if the employees tried to bring in the Teamsters. In September, Edwards told Crawford that he did not care about the drivers having a meeting, but if the drivers pursued their union organization drive he would just fire them or "they might just close the whole company down." These threats violated Section 8(a)(1) of the Act.

Moreover, the threats are not protected statements of the Respondent's belief of the effect union representation would have on the Respondent's employees. When an employer makes a prediction of the effects unionization will have on the company, "the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control." *NLRB v. Gissel Packing Co*., supra at 618. "Thus, an employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.'" Id. The Respondent presented no objective facts to support a reasonable belief in the probable consequences of Edwards' threats. Therefore, Edwards' threats of retaliation that the Respondent would fire the drivers, shut its doors, close the company, and sell the equipment if the employees pursued their organization drive are not protected. The Respondent violated Section 8(a)(1) of the Act by threatening to discharge its employees and close the business in retaliation for its employees' union activities.

3. Interrogation

Interrogation of employees is not unlawful per se. In determining whether an interrogation violates Section 8(a)(1) of the Act, the test is whether, under all of the circumstances, the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act. *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Among the factors to be considered are: background, nature of the information sought, identity of the questioner, place and method of interrogation, whether a valid purpose for the interrogation was communicated to the employee, and whether the employee was given assurances of no reprisals. *Performance Friction Corp*., 335 NLRB 1117, 1126 (2001).

In mid-August, Edwards asked Murray if he had heard about the Teamsters' efforts to organize the workers. Edwards asked the question at a jobsite in Monroe County, not in Edwards' or management's offices. The background includes Edwards' previous unlawful assistance to Local 614 and his unlawful statements about the futility of organizing for the Teamsters. Edwards did not communicate a purpose for the question and gave no assurances. On the other hand, the information sought was not personal to Murray, but rather, whether he had heard of the Teamsters' activities. Although the question was followed immediately by an unlawful threat against organizing activities for the Teamsters, the question itself was not an unlawful interrogation. In context, the "question" did not really seek any information; it was more like a statement. Edwards was setting up his unlawful threat by referring to the Teamsters organizing activities. His reference to the Teamsters' organizing activities was in the form of a question, but Murray's answer was irrelevant because the point of Edwards' statement was to threaten union activities on behalf of the Teamsters, not obtain information from Murray. Accordingly, Edwards' question to Murray was not an unlawful interrogation and did not violate Section 8(a)(1) of the Act.

On September 16, Edwards asked Crawford why the drivers were having the meeting that evening, and Crawford told him that the meeting involved the union. In spite of Edwards' subsequent unlawful threat to retaliate for union activity, the question he asked Crawford was not an unlawful interrogation. Rather, the question was either an innocuous inquiry, see *FMC Corp*., 290 NLRB 483, 486 (1988), or, like Edwards' question to Murray in mid-August, a set up for Edwards' subsequent threat to Crawford against union activity, in which event the "question" was more a statement than a question. Of course, it is difficult to label any of Edwards' statements or questions to Crawford as innocuous, especially considering Edwards' threats of closure, discharge, and futility of organizing activities. Nevertheless, under either of the foregoing explanations for Edwards' question, his inquiry, under all the circumstances, did not reasonably tend to restrain, coerce, or interfere with rights guaranteed by the Act. Edwards' question to Crawford was not an unlawful interrogation and did not violate Section 8(a)(1) of the Act.

Accordingly, for the foregoing reasons, I will recommend that the charges in the consolidated amended complaint relating to unlawful interrogation be dismissed.

4. Rule against distribution of union literature

"The governing principle is that a rule is presumptively invalid if it prohibits solicitation on the employees' own time." *Our Way, Inc*., 268 NLRB 394 (1983). Moreover, rules banning solicitation during working time must "state with sufficient clarity that employees may solicit on their own time." Id. at 395. Although an employer may lawfully prohibit employee distribution in work areas at all times, it may not prohibit distribution during nonworking time and in nonworking areas. *Hale Nani Rehabilitation*, 326 NLRB 335 (1998); *Stoddard-Quirk Mfg. Co*., 138 NLRB 615, 621 (1962).

Edwards told Crawford, "don't start that union stuff on this property" and "do it somewhere else." This edict prohibited Crawford from soliciting and distributing union literature on company property, and this overly broad rule violates the Act. See *United Parcel Service*, 331 NLRB 338 (2000); *Teksid Aluminum Foundry*, 311 NLRB 711, 714 (1993) (telling employees they could not hold a meeting or solicit union members on company property was unlawful). If Edwards intended a less expansive prohibition, the Respondent has the burden of prov-

ing such intent. It has not done so.[9] Acordingly, the Respondent violated Section 8(a)(1) of the Act by prohibiting, without limitation, the solicitation and distribution of union literature on its property.

5. Impression of surveillance

An employer who creates the impression that organizing activities of its employees are under surveillance violates Section 8(a)(1) of the Act. *Flexteel Industries*, 311 NLRB 257 (1993). The test is whether the employees would reasonably assume from the employer's statements or conduct that their organizing activities have been placed under surveillance. *United Charter Service*, 306 NLRB 150 (1992).

After Edwards learned of Crawford's distribution of the fliers on September 15, he told Crawford, "don't start that union stuff on this property." Crawford asked Edwards how he knew "what was going on down there," and Edwards replied that he knew. The General Counsel charges that Edwards' latter statement unlawfully creates the impression that the employees' union activities were under surveillance.

Crawford's testimony regarding Edwards' statement, even allowing for the incredibility of Edwards' denial that he made any statement creating the impression of surveillance, is insufficient to prove that the statement reasonably created the impression of surveillance. First, there is no apparent connection between Edwards' statement (don't start that union stuff on this property) and Crawford's response (how do you know what is going on down there). Second, Crawford did not explain what he meant, or how Edwards would have known what Crawford meant, by "down there." Because of this disjunction in the reported conversation, and the failure to explain the meaning of what was said, the General Counsel has failed to prove that the Respondent unlawfully created the impression that its employees' union activities were under surveillance. Accordingly, I will recommend that this charge be dismissed.

B. Section 8(a)(2) – Assistance to and recognition of Local 614

Under Section 8(a)(2) of the Act, an employer commits an unfair labor practice by interfering with the formation or administration of any labor organization or by contributing financial or other support to a labor organization. An employer violates this statute when its supervisor solicits authorization cards for a union. *Famous Castings Corp*., 301 NLRB 404 (1991); *Wackenhut Corp*., 226 NLRB 1085 (1976). An employer also violates this statute when it recognizes a minority union as the exclusive representative of its employees. *Ladies Garment Workers v. NLRB*, 366 U.S. 731 (1961). Moreover, authorization cards obtained with the employer's assistance and in violation of the statute are tainted and may not be used to establish the union's majority status. *Dejana Industries*, 336 NLRB 1202 (2001).

Edwards distributed and solicited signed authorization cards for Local 614 from the Respondent's employees, including Crawford, Feist, and Gardner. Indeed, his solicitation assumed elements of forcefulness when he conditioned the employees' receipt of medical benefits on their signing the authorization cards. The distribution and solicitation of signed authorization cards by Edwards violated Section 8(a)(2) of the Act.

In proving its charge that the Respondent's recognition of Local 614 on June 10, was a violation of Section 8(a)(2), the General Counsel offered evidence that Edwards had unlawfully solicited three (Crawford, Feist, and Gardner) of the unit's seven employees. However, "the General Counsel need not prove with mathematical certainty that the union lacked majority support at the time of recognition where there is evidence that the employer unlawfully assisted a union's organizational campaign." *Fountainview Care Center*, 317 NLRB 1286, 1289 (1995). "A pattern of company assistance can be sufficient to invalidate all cards." *Famous Castings Corp*., supra at 408; *Amalgamated Local 355 v. NLRB*, 481 F.2d 996, 1002 fn. 8 (2d Cir. 1973). In determining whether a pattern exists, all of the circumstances may be examined, including prerecognition conduct and postrecognition conduct. *Farmers Energy Corp*., 266 NLRB 722 (1983).

The Respondent and Edwards have not denied or addressed the actions recounted by Crawford, Feist, and Gardner (prerecognition) or Murray (postrecognition) regarding Edwards' solicitation of signed authorization cards for Local 614. This failure leads to the inference that Edwards similarly solicited cards for Local 614 from the other employees in the unit. See also *Clement Bros. Co*., 165 NLRB 698, 699 (1967) "The likelihood that the coercion taking place before the contract was executed was substantially more widespread than appears from the foregoing is suggested by Respondents' coercive tactics continuing after the contract was signed." However, it is not necessary to rely only on this inference in determining whether the Respondent's recognition of Local 614 on June 10, was a violation of Section 8(a)(2).

Edwards solicited signed cards from drivers before recognition was granted, and he continued these unlawful actions after the Respondent granted recognition to Local 614. Moreover, Edwards was instrumental in Crawford's decision to accept the position of acting steward for Local 614. This conduct, including the circumstances in which it occurred, and when contrasted with the treatment of the Teamsters, establishes a pattern of assistance sufficient to invalidate all cards. See, e.g., *Famous Castings Corp*., supra.

Accordingly, the Respondent's recognition of Local 614, which was based on the invalidated authorization cards, violated Section 8(a)(2) of the Act.

C. Section 8(a)(3) – Discharge of Crawford

Under the test set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983), when the employer is alleged to have violated Section 8(a)(3) in discharging an employee, the General Counsel has the burden of proving by a preponderance of the evidence that antiunion sentiment was a motivating factor in the discharge. To meet this burden, the General Counsel must offer credible evidence of union or other protected activity, employer knowledge of this activity, and the

[9] Edwards testified that he told Crawford not to distribute the union fliers during work hours. This testimony has not been credited. Nevertheless, if the testimony were credited, the result would not change. *Our Way, Inc*., supra at 395.

existence of antiunion animus. *Briar Crest Nursing Home*, 333 NLRB 935 (2001). Once such unlawful motivation is shown, the burden shifts to the employer to prove its affirmative defense that the alleged discriminatory discharge would have taken place even in the absence of the protected activity. Id.; *Wright Line*, supra. If the employer's stated motive is found to be false, the circumstances may warrant an inference that the true motive is an unlawful one. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966). Nevertheless, the employer's defense does not fail simply because not all of the evidence supports it, or even because some evidence tends to negate it. *Merrilat Industries*, 307 NLRB 1301, 1303 (1992). The ultimate burden of proving discrimination always remains with the General Counsel. *Wright Line*, supra.

Motive and union animus may be, and often are, proven through indirect and circumstantial evidence. *Sahara Las Vegas Corp*., 284 NLRB 337 (1987). All of the circumstances in the case should be considered in making this determination. Among the individual factors that the Board has found to support an inference of animus are (1) suspicious timing, (2) the abruptness of the termination, (3) failure to adequately investigate the alleged misconduct, (4) shifting or inconsistent explanations, and (5) false or pretextual reasons given to explain the Respondent's action. *Medic One, Inc*., 331 NLRB 464, 475 (2000); *Dynabil Industries*, 330 NLRB 360 (1999); *Lampi LLC*, 327 NLRB 222 (1998); and *Master Security Services*, 270 NLRB 543, 552 (1984).

The evidence presented to satisfy the General Counsel's initial burden must be analyzed separately from the evidence presented in the Respondent's defense. *Precision Industries*, 320 NLRB 661 (1996), enfd. 118 F.3d 585 (8th Cir. 1997). Nevertheless, an employer's stated reasons for an adverse employment action against an employee can be considered as a part of the General Counsel's initial burden, and if those reasons are pretextual, they can support an inference that the employer had an unlawful motive. *Black Entertainment Television*, 324 NLRB 1161 (1997). The entire record may be examined to ascertain whether the adverse employment action was motivated by protected activity. Thus, in determining whether the evidence presented has satisfied the General Counsel's initial burden, the evidence is not limited to the evidence introduced by the General Counsel, but can also include the reasons advanced by the Respondent for the discharge and any additional evidence offered at the hearing by the Respondent. *American Gardens Management Co*., 338 NLRB 644, 645 fn. 5 (2000); *Williams Contracting*, 309 NLRB 433 (1992).

Crawford engaged in union or protected activity when he was selected for, and accepted, the acting steward position for Local 614. Moreover, the first "problem" that Crawford had ever caused Edwards involved Crawford's complaint, on behalf of himself and the four to five drivers selected for the job, regarding the Rockville job. Edwards responded to Crawford's complaint by telling him, "if you guys had a problem, call him [Edwards] personally." This exchange also shows Edwards' knowledge that Crawford was engaged in protected activity on behalf of the drivers.

The Respondent was also aware of Crawford's interest in the Teamsters as a representative of the employees. When Edwards handed Crawford the Local 614 authorization card, Crawford asked about the Teamsters. Crawford signed the Teamsters authorization card on July 8, after which the other drivers frequently asked him for news on the organizing efforts. Crawford also engaged in protected activity by distributing fliers concerning a drivers' meeting at which a Teamsters representative would be present. Edwards responded to this protected activity, which was not done during work hours, by prohibiting Crawford from distributing union literature on the Respondent's property. Moreover, after Edwards was told that the meeting concerned union activity, he threatened Crawford that discharges or closure would follow if the drivers pursued their union organization drive. These facts establish Crawford's protected union activity, the Respondent's knowledge of that activity, and the Respondent's animus. Animus is also shown by the Respondent's 8(a)(1) violations, *Greyston Bakery*, 327 NLRB 433 (1999), as well as the Respondent's demonstrated preference for Local 614 rather than the Teamsters.

The Respondent argues that it would have discharged Crawford in the absence of his protected activity. However, the evidence does not support this contention. The Respondent argues, for example, that unlawful motivation has not been proven because Edwards did not tell Crawford that he was being discharged for union activity. This claim is misplaced. It would be most unusual and very surprising if Edwards had openly admitted to Crawford that he was being discharged because of his union activity. The fact that employers rarely if ever tell a fired employee that he is being discharged because of his protected activity explains, at least in part, the adoption and use of the indirect method of proving motive set forth in *Wright Line* and other cases.

The Respondent's primary factual contention in its defense to the present charge is that it discharged Crawford because Crawford was "bad-mouthing" the Respondent, and not because Crawford was engaging in protected union activity. Again, however, the credible evidence does not support this contention. First, the credible evidence does not support the contention that Crawford was disparaging the Respondent. Second, Edwards falsely told Crawford, the day before he was discharged, that the Huron County police had reported that Crawford had been disparaging the Respondent. Third, the Respondent failed to offer the testimony of the employees who allegedly told Edwards of such disparaging comments. Moreover, even if Edwards did receive reports from Redli and Fesko that Crawford had disparaged the Respondent, Edwards made no attempt to investigate the validity or accuracy of such reports. Edwards' failure to make any attempt to investigate shows that he was not concerned with what such an investigation would disclose. In turn, this shows that the Respondent's reason for the discharge was not the true reason for the discharge.

The Board has consistently held that an employer's failure to conduct a full and fair investigation of an employee's alleged misconduct may be evidence of discriminatory intent. *Firestone Textile Co*., 203 NLRB 89, 95 (1973). Assuming that Edwards received a report from Redli in the evening of September 23 that Crawford had disparaged the Respondent that day, Edwards made no investigation of this alleged report. Edwards

allegedly received Redli's report after Edwards had spoken to Crawford on September 23, after Edwards told Crawford that there was nothing he could do about the alleged report from the Huron County police, and after Edwards made clear to Crawford that he was still employed. Edwards then fired Crawford the next morning without giving Crawford a chance to respond to Redli's report. Thus, Edwards discharged Crawford based on this alleged report from Redli, after discouraging Redli from discussing it with Crawford, and without investigating the report.

The timing of Crawford's discharge is suspicious because it occurred 8 days after Crawford held a meeting with the drivers and with the Teamsters union to discuss union business. Moreover, Crawford's discharge was abrupt because Edwards admits that he did not give Crawford a chance to explain or respond to the alleged report that Edwards received from Redli the previous evening.

Shifting explanations for discharge may provide evidence of unlawful motivation. *U.S. Coachworks, Inc*., 334 NLRB 955, 957 (2001). The Respondent claims that Crawford complained about his job and acted as if he did not want to work there. However, the Respondent has not shown that such complaints or such a desire warranted Crawford's discharge.[10] Nor did Edwards mention these matters to Crawford when he was discharged. The Respondent also claims that Crawford violated its code of conduct (1) on September 12, by using foul language on the two-way radio,[11] and (2) by disparaging the Respondent. However, the Respondent does not claim that Crawford's alleged use of foul language entered into the discharge decision. And again, Edwards did not mention using foul language on the radio when Crawford was discharged. Finally, whether or not disparaging the Respondent is covered in the Respondent's code of conduct, this fact is not relevant to the resolution of the present issue. First, the Respondent did not offer any competent or credible evidence that Crawford disparaged the Respondent. Second, Edwards did not mention the code of conduct to Crawford when he was discharged. In conclusion, the shifting explanations of the Respondent for its discharge of Crawford fail to provide a lawful reason for Crawford's discharge and provide further support for the Respondent's discriminatory intent. Accordingly, and for all the foregoing reasons, the General Counsel has met its burden of proving a prima facie case of discrimination when the Respondent discharged Crawford.

When an employer offers shifting reasons for its decision to discharge an employee, an inference may be drawn that the real reason for the decision is not among those asserted by the employer. *U.S. Coachworks, Inc*., supra. The Respondent's shifting explanations are proof that its reason for discharging Crawford did not include disparaging the Respondent or violating the Code of Conduct or complaining. This conclusion warrants a further inference that the Respondent's true motive for discharging Crawford was an unlawful one. *Shattuck Denn Mining Corp. v. NLRB*, supra.

Alternatively, the Respondent has failed to prove that it would have taken the same action in the absence of Crawford's union activities. As noted above, the Respondent failed to prove that Crawford engaged in the conduct for which he was discharged, viz., disparaging the Respondent. Moreover, if the Respondent were to claim that it discharged Crawford based on Redli's alleged report of disparagement, as opposed to Crawford actually engaging in such conduct, this claim would be rejected. The Respondent's failure to investigate Redli's report, or even to confront Crawford with the report and give him a chance to explain, shows that the Respondent did not rely on that report in discharging Crawford. Moreover, the Respondent would not normally accept and rely on a report from an employee about the actions of a coemployee, and then discharge the coemployee based on the report, without attempting to ascertain the accuracy of the allegations in the report. Redli's alleged report was not the reason for Crawford's discharge; it is the excuse for the discharge. The Respondent was looking for a reason to terminate Crawford, especially after he organized the drivers' meeting with the Teamsters on September 16, 1 week before he was discharged, and it uses Redli's alleged report to explain or justify Crawford's termination.

For the foregoing reasons, the Respondent violated Section 8(a)(3) and (1) of the Act when it discharged Crawford because of his protected, union activities.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 614, United Construction Trades and Industrial Employees International Union (Local 614) and Local 247, International Brotherhood of Teamsters, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by making a threat to employees regarding the futility of union activity; by making a threat to discharge employees and to close its business if its employees engaged in union activities; and by maintaining a rule prohibiting its employees from soliciting for unions or distributing union literature on its property.

4. The Respondent violated Section 8(a)(2) and (1) of the Act by unlawfully distributing, and soliciting signatures for, authorization cards for Local 614, and by unlawfully recognizing Local 614 as the exclusive representative of the Respondent's truckdrivers and shop employees based on tainted authorization cards.

5. The Respondent violated Section 8(a)(3) and (1) of the Act by unlawfully discharging Jeffrey A. Crawford.

6. The foregoing violations constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[10] I recognize that if Crawford did act as if he did not want to work at the Respondent, Edwards' testimony that Crawford disparaged the Respondent would be less incredible. However, I do not credit Edwards' testimony in this regard. The testimony is vague, and it is just as likely that Edwards made this conclusion from Crawford's union activities as from anything else.

[11] Crawford testified that he told Edwards the directive was "a bunch of crap." However, and intending no offense to the more unrestrained language that truckdrivers may occasionally use, I find that Crawford more likely used another word for crap, perhaps "bullshit," the term used by Maddox when he discussed Edwards' directive with Crawford. (Tr. 107.)

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Jeffrey A. Crawford, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Michigan Road Maintenance Company, LLC d/b/a Michigan Roads Maintenance Company, LLC, Trenton, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees regarding the futility of union activity.

(b) Threatening to discharge its employees or close its business if its employees engage in union activity.

(c) Maintaining a rule prohibiting its employees from soliciting for unions or distributing union literature on its property.

(d) Distributing and soliciting signatures on authorization cards for Local 614, United Construction Trades and Industrial Employees International Union (Local 614).

(e) Recognizing Local 614 as the exclusive representative of the Respondent's truckdrivers and shop employees, unless the National Labor Relations Board certifies that labor organization as the exclusive representative of the unit.

(f) Discharging or otherwise discriminating against any employee for supporting Local 247, International Brotherhood of Teamsters, AFL–CIO or any other union.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold recognition from Local 614 as the representative of its Unit employees unless the Board certifies Local 614 as the exclusive collective-bargaining representative of members of the unit.

(b) Within 14 days from the date of this Order, offer Jeffrey A. Crawford full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Jeffrey A. Crawford whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Jeffrey A. Crawford, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Trenton, Michigan, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 30, 2003.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., October 27, 2004.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "posted by order of the national labor relations board" shall read "posted pursuant to a judgment of the united states court of appeals enforcing an order of the national labor relations board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees regarding the futility of union activity.

WE WILL NOT threaten to discharge employees or close our business if employees engage in union activity.

WE WILL NOT maintain a rule prohibiting employees from soliciting for unions or distributing union literature on our property.

WE WILL NOT distribute or solicit signatures for authorization cards of Local 614, United Construction Trades and Industrial Employees International Union (Local 614).

WE WILL NOT recognize Local 614 as the exclusive representative of our truckdrivers and shop employees, unless the National Labor Relations Board certifies that labor organization as the exclusive representative of the unit.

WE WILL NOT discharge or otherwise discriminate against any employee for supporting Local 247, International Brotherhood of Teamsters, AFL–CIO or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL withdraw and withhold recognition from Local 614 as the representative of unit employees unless the Board certifies Local 614 as the exclusive collective-bargaining representative of members of the unit.

WE WILL within 14 days from the date of this Order, offer Jeffrey A. Crawford full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Jeffrey A. Crawford whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Jeffrey A. Crawford, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

MICHIGAN ROAD MAINTENANCE COMPANY, LLC D/B/A
MICHIGAN ROADS MAINTENANCE COMPANY, LLC